MST

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.522 OF 2007

Vijay Omkarmal Jain @ Saraogi — Appellant
versus
The M.C.G.M. — Respondent

Mr.G.H.Shukla & Co. for appellant.
Ms.Geeta Joglekar for respondent.

CORAM : A.S.OKA, J.
DATE : 29th June 2007

PC :

1. Admit. Advocate for respondent waives service. Taken up for final hearing.

2. The appeal is by the original plaintiff taking exception to the order dated 19th June 2007 passed by the Trial Court by which a prayer for ad-interim injunction made by the appellant has been rejected. The challenge in the suit filed by the appellant was to an action u/s 351 of the Bombay Municipal Corporation Act, 1888. The allegation in the notice issued u/s 351 of the said Act is as regards construction of a mezzanine floor, construction of bath room etc.. A reply was filed by the appellant to the notice by contending that the offending structure was in existence for last fifty years. After

considering the reply, the Assistant Commissioner of the respondent Corporation passed an order of demolition.

3. The impugned order reads thus:-

> "Heard the counsels. Perused the papers. Mezzanine floor is excess in area than permissible limits in both area as well as height and therefore, the Plaintiff is not entitled to protection in the form of prohibitory injunction against the Defendant/Corpn. Leave granted to register the Notice of Motion. Issue Notice to Defendants made returnable on 07.07.2007."

4. The impugned order does not take into consideration the policy of the Municipal Corporation of tolerating mezzanine floors in existence as on 15th August 1997. Moreover, there is no reference in the Court order to the other offending structure which is part of the notice u/s.351.

5. The stand specifically taken by the appellant was that the mezzanine floor was in existence for last fifty years. The stand will have to be considered in the light of the policy. It is, therefore, obvious that ad-interim relief could not have been refused on the ground on which the

learned Trial Judge has passed the impugned order.

6. Hence, till the disposal of Notice of Motion the offending structure deserves to be protected. Hence, I pass following order.

a) The impugned order dated 19.6.2007 is quashed and set aside;

b) The parties are directed to maintain status-quo in all respects in respect of the offending structure till the final disposal of the Notice of Motion;

c) Hearing of the Notice of Motion is expedited and the same shall be disposed of within three months from today;

d) All contentions of the parties in the pending Notice of Motion are expressly kept open;

e) Appeal allowed in the above terms. No order as to costs;

f) In view of disposal of appeal, C.A. No.720 of 2007 does not survive.

MST

(A.S.OKA, J.)